

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-7043

---

United States Court of Appeals  
FOR THE SECOND CIRCUIT

---

ELLIS-BARKER SILVER CO., INC.,

*Plaintiff-Appellant,*

*against*

RIDGWAY POTTERIES LIMITED,

*Defendant-Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

JOINT APPENDIX

---

LEON, WEILL & MAHONY

*Attorneys for Plaintiff-Appellant*

261 Madison Avenue

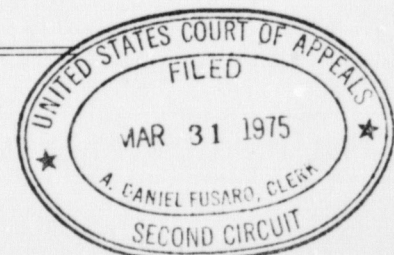
New York, New York 10016

CRAVATH, SWAINE & MOORE

*Attorneys for Defendant-Appellee*

One Chase Manhattan Plaza

New York, New York 10005



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DOCKET ENTRIES

74 CIV. 109

A 1

A 2  
SUMMONS

Supreme Court of the State of New York  
County of NEW YORK

ELLIS-BARKER SILVER CO. INC.,

Plaintiff

against

RIDGWAY POTTERIES LIMITED,

Defendant

Index No.

Plaintiff designates  
New York

County as the place of trial

The basis of the venue is  
Plaintiff's  
Office Address

Summons

Plaintiff resides at  
225 Fifth Avenue

County of New York

To the above named Defendant

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, January 18, 1974

Defendant's Address

Ash Hall

Sutherland Road

Longton, Stoke-on-Trent ST 3, 1HZ

England

LEON, WEILL & MAHONY

Attorney(s) for Plaintiff

Office and Post Office Address

261 Madison Avenue

New York, New York 10016

(212) MU7-5707



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X

ELLIS-BARKER SILVER CO. INC.,

Index No.

Plaintiff,

- against -

RIDGWAY POTTERIES LIMITED,

Defendant.

----- X

VERIFIED  
COMPLAINT

Plaintiff, by its attorneys, LEON, WEILL & MAHONY,  
for its complaint, alleges:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Plaintiff, ELLIS-BARKER SILVER CO. INC.  
("ELLIS-BARKER") is a foreign corporation organized pursuant to the laws of the State of Delaware and authorized to do business in the State of New York.

SECOND: On information and belief, defendant, RIDGWAY POTTERIES LIMITED ("RIDGWAY") is a foreign corporation organized under the laws of England.

THIRD: On or about February 25, 1967 in the State of New York, Ridgway and one, Exclusive China Company, Inc. ("EXCLUSIVE-CHINA"), a New York corporation, entered into an agreement in writing which, amongst other things, appointed

A        4  
*Complaint*

Exclusive China its sole agent and distributor in the United States of America for the sale of ornamental bone china products of the company's Adderley Floral China Factory, Sutherland Road, Langton, Stoke-on-Trent, with the exception of Bird studies back stamped "Royal Adderley Floral Bone China" and Bone China Floral Clusters back stamped "Golden Crown".

FOURTH: That on or about November 14, 1969, the aforesaid agreement was amended to provide that it continues for an indefinite time, terminable as provided therein.

FIFTH: By agreement dated July 30, 1971, Exclusive China was released from the agreement of February 25, 1967 as amended, and Ellis-Barker was appointed agent for the sale and distribution of the products of the company referred to in the aforesaid agreement and succeeded to all of the rights of Exclusive China, subject to the terms and conditions of said agreement.

SIXTH: Ridgway thereafter and while said agreement was in full force and effect, committed a material breach thereof and was and still is attempting in bad faith to obtain the benefits of that agreement without paying royalties as defined therein, despite repeated demands, in that it has sold for distribution in the United States of America Black and White Scotties made of Royal Adderley English Bone China manufactured at its Adderley Floral China Factory in Langton, Stoke-on-Trent.

SEVENTH: Plaintiff has no adequate remedy at law.



A        5  
*Complaint*

EIGHTH: By reason of the foregoing, Ellis-Barker has suffered loss and damage in amounts which cannot be presently ascertained.

AS AND FOR A SECOND CAUSE OF ACTION

NINTH: Repeats and reiterates each and every allegation contained in paragraphs "FIRST" and "SECOND" hereof as though fully set forth.

TENTH: Pursuant to the aforesaid agreements and on or about October 7, 1971, defendant agreed to pay seven and one-half percent (7½%) of the sales price received by it for the sale outside the United States of America of its products designed by one, Nan Prussack.

ELEVENTH: That thereafter, defendant sold such products manufactured by it and designed by Nan Prussack, in substantial amounts outside of the United States of America.

TWELFTH: That plaintiff has duly demanded an accounting from the defendant of such sales made by it, but defendant has consistently refused to account therefor.

THIRTEENTH: That by reason thereof, plaintiff has suffered substantial losses which cannot be ascertained.

FOURTEENTH: That plaintiff has no adequate remedy at law.

A        6  
*Complaint*

WHEREFORE, plaintiff demands judgment as follows:

WITH RESPECT TO THE FIRST CAUSE OF ACTION

1. That defendant account for all of the acts and for all of the moneys received by it from the sale and distribution made by it as aforesaid;

2. That defendant pay all moneys which by said account is found to be due to this plaintiff.

WITH RESPECT TO THE SECOND CAUSE OF ACTION

1. That defendant account for all of the acts and for all of the moneys received by it from the sale and distribution made by it as aforesaid;

2. That defendant pay all moneys which by said account is found to be due to this plaintiff;

3. That plaintiff have such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

LEON, WEILL & MAHONY  
Attorneys for Plaintiff  
Office & P. O. Address  
261 Madison Avenue  
New York, New York 10016  
(212) 687-5707



A 7

AFFIDAVIT OF SERVICE AND ACKNOWLEDGEMENT OF UNITED STATES  
CONSUL IN ENGLAND

SUPREME COURT : NEW YORK COUNTY

ELLIS-BARKER SILVER CO. INC.,

Plaintiff

against

RIDGWAY POTTERIES LIMITED

Defendant

Index No.

Affidavit of Service of Summons  
and Complaint

~~STATE OF NEW YORK, COUNTY OF~~

ss.:

Francis Gowan Eynon -

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at  
13 BROKEN CROSS, MAULESFIELD, CHESHIRE, ENGLAND.

That on the 5<sup>th</sup> day of February 1974 at London Road Stoke on Trent  
England

deponent served the annexed summons and complaint in this action on Mr. B. C. COOKE.

who is the Company Secretary of the  
defendant herein, by delivering a true copy thereof to him personally. Deponent knew the  
person so served to be the person mentioned and described in said papers as defendant therein.

I asked him whether he was in active military service of the United States or of the State of New York in any capacity whatever. He told me he was not. He wore ordinary civilian clothes and no military uniform. Upon information and belief I aver that the defendant is not in the military service of New York State or of the United States as that term is defined in either the State or in the Federal Soldier's and Sailor's Civil Relief Acts. The source of my information and the grounds of my belief are the conversations and observations above narrated.

Sworn to before me, this 5<sup>th</sup>  
day of February 1974

C. D. G. Warner, Notary Public,  
Burslem, ENGLAND.

Francis Gowan Eynon

Print name beneath signature

Francis Gowan Eynon.

ONLY COPY AVAILABLE

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*Affidavit of Service and Acknowledgement of United States  
Consul in England*

GREAT BRITAIN AND NORTHERN IRELAND )  
LONDON, ENGLAND ) ss.  
EMBASSY OF THE UNITED STATES OF AMERICA )

I, Micaela A. Cella Vice Consul of the United States of  
America residing at London, England, duly commissioned and qualified,  
do hereby certify that

C. ROGER WALKER

whose signature and official seal are respectively subscribed and  
affixed to the annexed certificate, was on the date of the signing  
thereof a Notary Public at Burslem, Stoke-on-Trent, Staffordshire, England  
duly authorized to perform notarial acts, duly appointed and qualified,  
to whose official acts faith and credit are due; that I have compared  
the signature of the said

C. ROGER WALKER

on the annexed certificate with a specimen of his signature filed in  
this Embassy; that I believe his signature to be genuine; that I have  
compared the impression of the seal affixed thereto with a specimen  
thereof filed in this Embassy, and that I believe the impression of  
the seal upon the said original annexed certificate to be genuine.

IN WITNESS WHEREOF I have herewith  
set my hand and affixed the seal  
of the Consular Service of the  
United States of America at London,  
England, this twelfth day  
of February in the year of Our  
Lord one thousand nine hundred and  
seventy-four.

*Micaela A. Cella*

Micaela A. Cella  
Vice Consul of the United States  
of America at London, England.

Service Receipt No: C0619817

Tariff Item No: 48

Fee: \$2.50 - ~~\$2.00~~ \$1.08

~~Non-Exported~~

IND/112  
Mar. 73



A 9

NOTICE OF REMOVAL OF ACTION

FILED  
U.S. DISTRICT COURT  
MAR 7 3:39 PM '74  
S.D. OF N.Y.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
ELLIS-BARKER SILVER CO. INC.,

Plaintiff,

-against-

RIDGWAY POTTERIES LIMITED,

Defendant.  
-----

:  
: 74 Civ. 1080 (MP)  
:

: NOTICE OF REMOVAL  
: OF ACTION  
:

: New York County Clerk's  
: Index No.  
: 3239/1974  
:

PLEASE TAKE NOTICE that a Petition for Removal  
and Bond, copies of which are annexed hereto, were filed  
in the office of the Clerk of the United States District  
Court for the Southern District of New York on the 7th day  
of March 1974.

March 7, 1974

CRAVATH, SWAINE & MOORE,  
Attorneys for Defendant-  
Petitioner,  
One Chase Manhattan Plaza,  
New York, N. Y. 10005

TO:

LEON, WEILL & MAHONY,  
Attorneys for Plaintiff,  
261 Madison Avenue,  
New York, N. Y. 10016  
MU 7-5707

CLERK OF THE SUPREME COURT,  
NEW YORK COUNTY

PETITION FOR REMOVAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----  
 ELLIS-BARKER SILVER CO. INC., : 74 Civ. ( )  
 :  
 Plaintiff, :  
 : PETITION FOR REMOVAL  
 -against- :  
 :  
 RIDGWAY POTTERIES LIMITED, :  
 :  
 Defendant. :  
 :  
 -----

Ridgway Potteries Limited (Petitioner), files this, its petition for removal of this action to this Court from the Supreme Court of the State of New York, County of New York, and respectfully shows:

(1) This is an action of a civil nature of which the District Courts of the United States have original jurisdiction.

(2) Petitioner was at the time of the commencement of this action and is a corporation incorporated under the laws of England, having its principal place of business in England.

(3) Plaintiff was at the time of the commencement of this action and is a corporation incorporated under the laws of the State of Delaware, having its principal place of business other than in England.

(4) Plaintiff sues to recover for alleged breach by defendant of commission agreements.



*Petition for Removal*

(5) The amount in controversy exceeds \$10,000, exclusive of interest and costs.

(6) The action, if validly instituted, was instituted in the State Court on February 5, 1974, and this petition is being filed within the time allowed by law.

(7) Petitioner files herewith a bond with good and sufficient surety, in the sum of Five hundred Dollars (\$500), conditioned that it will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(8) Copies of the summons, complaint and affidavit of service, being the only papers filed in this action at the date hereof, are annexed hereto.

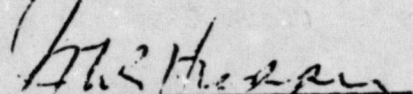
March 7, 1974

RIDGWAY POTTERIES LIMITED,

Petitioner.

CRAVATH, SWAINE & MOORE,

by



A member of the firm  
Attorneys for Petitioner,  
One Chase Manhattan Plaza,  
New York, N. Y. 10005

[Removal Bonds intentionally omitted]

COVERING LETTER RE DEFENDANT'S MOTION TO DISMISS

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEEX: 620976

TELETYPE: 710-561-0338

TELEX: 128847

4, PLACE DE LA  
75008 PARIS, FRANCE  
TELEPHONE 01 42 11 11  
TELEX 210 110

TERMINAL HOUSE  
82, GROSVENOR GARDENS  
LONDON, SW1W 0AU, ENGLAND  
TELEPHONE 01-730-5203  
TELEX 817840

CABLE ADDRESSES  
CRAVATH, N.Y.  
CRAVATH, PARIS  
CRAVATH, LONDON & W.I.

MAHCEY MOORE  
MICHAEL L. O'PATRICK  
NARD S. FINNEY  
MAD A. HALLERAN  
ALBERT R. CONNELLY  
L. R. BRESLIN, JR.  
FRANK H. DETWEILER  
GEORGE G. TYLER  
JOHN J. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON  
WILLIAM S. MARSHALL  
RALPH L. MCAFEE  
ROYALL VICTOR  
ALLEN M. HERRILL  
HENRY W. DE ROSSIAN  
ALLEN F. HAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRECK, JR.

BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT, JR.  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
HELVIN L. SECORICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. KRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID O. GRIMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARTZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOES  
DAVID O. BROWNWOOD  
PAUL M. DODDY

May 7, 1974

Ellis-Barker Silver Co. v. Ridgway Potteries Ltd.  
(74 Civ. 1080)

Dear Judge Pollack:

Herewith are the original and one copy of our (1) Notice of Motion and Motion to Dismiss and Affidavits in Support Thereof and (2) Memorandum in Support of Motion to Dismiss, which were served upon, and (as acknowledged on the original) received by, opposing counsel pursuant to agreement of counsel on April 29, 1974. Through inadvertence, the rules and statutes upon which the motion is predicated were not included.

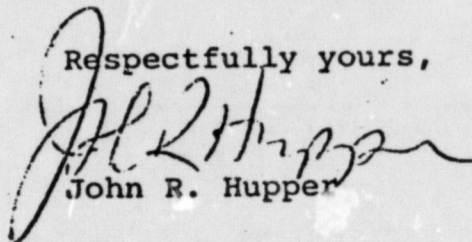
The first ground for the Motion, that the Court lacks jurisdiction over defendant's person in that the out of state service utilized by plaintiff did not serve to confer such jurisdiction over the defendant, is based upon Rule 12(b)(2) of the Federal Rules of Civil Procedure and Sections 302 and 313 of the New York Civil Practice Law and Rules.

The second, and alternative, ground for the motion, that the Court should decline jurisdiction in that the agreement sued upon stipulates that actions thereunder may only be brought in England before an English court, is based upon Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure.



The third, and further alternative, ground for the motion, that the Court should decline jurisdiction on the basis of forum non conveniens, is based upon Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure and Section 327 of the New York Civil Practice Law and Rules.

Respectfully yours,



John R. Hupper

Hon. Milton Pollack,  
United States District Court,  
United States Court House,  
Foley Square,  
New York, N. Y. 10007

Encls.

27A

BY HAND

Copy w/o encls. to Messrs. Leon, Weill & Mahony,  
261 Madison Avenue,  
New York, N. Y. 10016

BY HAND

NOTICE OF MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
ELLIS-BARKER SILVER CO. INC.,

Plaintiff,

-against-

RIDGWAY POTTERIES LIMITED,

Defendant,  
-----

:  
:  
: ORAL ARGUMENT REQUESTED

:  
: 74 Civ. 1080 (M.P.)

:  
: NOTICE OF MOTION

:  
: AND

:  
: MOTION TO DISMISS

S I R S :

PLEASE TAKE NOTICE that, upon the affidavits of Bernard Cordon, sworn to on March 15, 1974, and upon the prior pleadings and proceedings had herein, defendant will move this Court at Room 2704, United States Court House, Foley Square, City of New York, on the 10th day of May 1974, at 2:00 p.m., or as soon thereafter as counsel can be heard, for an order dismissing the Complaint on the grounds that:

(1) the Court lacks jurisdiction over defendant's person in that the out of state service utilized by plaintiff did not serve to confer such jurisdiction over the defendant;

(2) the Court should decline jurisdiction in that the agreement sued upon stipulates that actions thereunder may only be brought in England before an English court; and



*Notice of Motion to Dismiss*

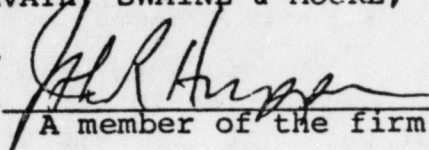
(3) the Court should decline jurisdiction on  
the basis of forum non conveniens;  
and for such other and further relief as to this Court may  
seem just and proper.

Dated: April 26, 1974

Respectfully submitted,

CRAVATH SWAINE & MOORE,

by

  
A member of the firm

Attorneys for Defendant

TO: MESSRS. LEON, WEILL & MAHONY,  
Attorneys for Plaintiff,  
261 Madison Avenue,  
New York, N. Y. 10016

## LETTER REQUESTING SUBSTITUTION OF SUPPORTING AFFIDAVIT

CRAVATH, SWAINE &amp; MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELE: 620673

TELETYPE: 710-581-0338

TELEX: 125547

4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE 285-8117  
TELEX 29 530TERMINAL HOUSE  
82, GROSVENOR GARDENS  
LONDON, SW1W 0AU, ENGLAND  
TELEPHONE 01-730-8203  
TELEX 917840CABLE ADDRESSES  
CRAVATH, N.Y.  
CRAVATH, PARIS  
CRAVATH, LONDON S.W. 1

May 15, 1974

Ellis-Barker Silver Co. v. Ridgway Potteries Ltd.  
(74 Civ. 1080)

Dear Judge Pollack:

I am forwarding to you herewith the original and one copy of an Affidavit in Support of Motion to Dismiss for Lack of Personal Jurisdiction, sworn to by Bernard Cordon on May 1, 1974. This affidavit is intended to replace the Affidavit in Support of Motion to Dismiss for Lack of Personal Jurisdiction, sworn to by Bernard Cordon on March 15, 1974, and submitted to the Court on May 7, 1974, attached to defendant Ridgway's Notice of Motion and Motion to Dismiss.

The replacement affidavit contains the following modifications from the original affidavit:

1. In paragraph 9, "Ellis Barker" is substituted for "Prussack" as the party with whom Ridgway contracted with respect to the products designed by Nan Prussack; and
2. Paragraph 10 is added; it states that Ridgway has no New York telephone number or listing; and that sales by Ridgway on Ellis-Barker orders were made ex-works, and thus that liability for the goods passed to the buyer as soon as the goods left the factory.

Respectfully yours,

John R. Hupper

Hon. Wilton Pollack,  
United States District Court,  
United States Courthouse,  
Foley Square,  
New York, N. Y. 10007

Encls

27A

BY HAND



A 17

*Letter Requesting Substitution of Supporting Affidavit*

2

Copy w/encl. to Messrs. Leon, Weill & Mahony,  
261 Madison Avenue,  
New York, N. Y. 10016

BY HAND

## AFFIDAVIT OF BERNARD CORDON IN SUPPORT OF MOTION TO DISMISS

-----	:	
ELLIS-BARKER SILVER CO., INC.,	:	
Plaintiff,	:	
- against -	:	
RIDGWAY POTTERIES LIMITED	:	
Defendant	:	
-----	:	

Index No. 74 Cw. 1080(mP)

AFFIDAVIT IN SUPPORT  
OF MOTION TO DISMISS  
FOR LACK OF PERSONAL  
JURISDICTION

Stoke-on-Trent in the County of Stafford

BERNARD CORDON of 29 Southlow Road, Werrington, Stoke-on-Trent,  
being duly sworn, deposes and says:

1. I am a Director and the Company Secretary of the Defendant Ridgway Potteries Limited. I have read plaintiff's Complaint and am familiar with the matters discussed therein. I make this Affidavit in support of defendant's motion to dismiss for lack of personal jurisdiction over defendant.

2. Defendant Ridgway is a corporation organized and existing under the laws of the United Kingdom. It does not have any offices or place of business outside the United Kingdom.

3. Defendant Ridgway was served with the summons and complaint outside the State of New York.

4. Ridgway is not a domiciliary of the State of New York. It neither owns, uses or possesses any real property in the State of New York.

5. Ridgway has not qualified to do business and is not "doing business" within the State of New York. It does not conduct any systematic or regular activities within the State.



*Affidavit of Bernard Cordon in Support of Motion to Dismiss*

6. Ridgway does not, in person or through an agent, transact any business within the State of New York.

7. Each of the written agreements referred to in the first count of the complaint (and appended to defendant's Affidavit in support of motion to dismiss or stay on subject matter jurisdiction grounds) was negotiated in England and was signed by the defendants in England before being signed by the other party or parties thereto (on information and belief in New York). As provided in paragraph ten of the November 28, 1967, agreement, all orders were accepted on the basis of payment in cash in sterling in the United Kingdom. As provided in the Schedule to the November 28, 1967, agreement, the products to be distributed, on which a commission was to be paid, were all to be manufactured at Ridgway's Sutherland Road, Longton factory, in the United Kingdom.

8. The Black and White Scotties, the distribution of which plaintiff claims entitled it to a commission, were manufactured at Ridgway's Paladin Works, Fenton factory, in the United Kingdom. The Scotties were manufactured for, and sold to, James Buchanan and Co. Limited ("Buchanan") of the United Kingdom, and were delivered in the United Kingdom to Buchanan, after which time Ridgway ceased to have any control or ownership over, or interest in the Scotties. The contract between Buchanan and Ridgway was made in the United Kingdom, and all negotiations on the terms of the contract took place in the United Kingdom.

9. The products designed by Nan Prussack, referred to in plaintiff's second count, were designed and manufactured in the United

## Affidavit of Bernard Cordon in Support of Motion to Dismiss

Kingdom. The contract between Ridgway and Ellis Barker was negotiated, signed, and became effective in the United Kingdom. The products designed by Prussack the subject of this dispute were sold and distributed solely outside the United States.

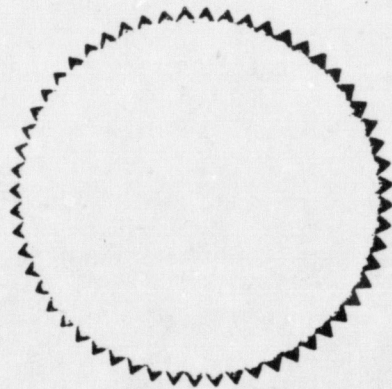
10. Ridgway has no New York telephone number or listing. Sales by Ridgway to Ellis-Barker were invoiced at ex-works prices; under these terms the risk passes to the buyer immediately the goods leave the factory.

Sworn to before me this )

1<sup>st</sup> day of May 1974 )

at St. Peter's Church in the  
County of Stafford  
England

*H. C. Clive*



AFFIDAVIT OF BERNARD CORDON IN SUPPORT OF MOTION TO  
DECLINE JURISDICTION

-----	:	
ELLIS-BARKER SILVER CO., INC.,	:	
	:	Index No.
Plaintiff,	:	
	:	
- against -	:	AFFIDAVIT IN SUPPORT
	:	OF MOTION TO DECLINE
RIDGWAY POTTERIES LIMITED	:	JURISDICTION
	:	
Defendant.	:	
-----	:	

Stoke-on-Trent in the County of Stafford

BERNARD CORDON of 29 Southlow Road, Werrington, Stoke-on-Trent,  
being duly sworn, deposes and says:

1. I am a Director and the Company Secretary of the Defendant Ridgway Potteries Limited. I have read plaintiff's Complaint and the written agreements among the parties to this action and Exclusive China Company Inc. ("Exclusive China"), plaintiff's assignor, and I am familiar with the matters discussed therein. I make this Affidavit in support of defendant's motion to dismiss or stay on subject matter jurisdiction grounds.

2. On or about November 28, 1967, Ridgway and Exclusive China entered into a written agreement, a true copy of which is attached as Exhibit A, which, among other things, appointed Exclusive China its sole agent and distributor in the United States of America for the sale of ornamental bone china products of Ridgway's Adderley Floral China Factory, Sutherland Road, Longton, Stoke-on-Trent, England, with certain specified exceptions. On information and belief this agreement is the agreement that is described in the third paragraph of the Complaint,

*Affidavit of Bernard Cordon in Support of Motion to  
Decline Jurisdiction*

and erroneously identified there as having been entered into on or about February 25, 1967.

3. On or about November 14, 1969, Ridgway and Exclusive China entered into a written agreement, a true copy of which is attached hereto as Exhibit B, which agreement amended the November 28, 1967 agreement by extending it indefinitely subject to termination by either party upon twelve months' notice. On information and belief, this is the agreement described in the fourth paragraph of the Complaint.

4. On or about July 30, 1971, Ridgway, Exclusive China, and Ellis Barker entered into a written agreement, a true copy of which is attached as Exhibit C, which agreement further amended the November 28, 1967, agreement by providing that Ellis Barker, as Exclusive China's assignee, was appointed agent for the products of Ridgway for which Exclusive China had been Ridgway's agent "subject to all the terms and conditions of the said Agreement [of November 28, 1967]".

5. Paragraph 18 of the November 28, 1967, agreement provides in full:

"This Agreement and the agency hereby constituted shall be construed and have effect according to the Laws of England and any dispute or difference arising between the parties hereunder or regarding anything done or omitted by either party in relation to this Agreement shall be determined in accordance with these laws and in any such dispute the Agent will submit to the Supreme Court of Judicature in England as the sole competent Tribunal for determining the same".

Paragraph 18 of the November 28, 1967, agreement has not been altered



6. Ridgway does not have any assets in the United States

Book

1000000000  
Notary Public

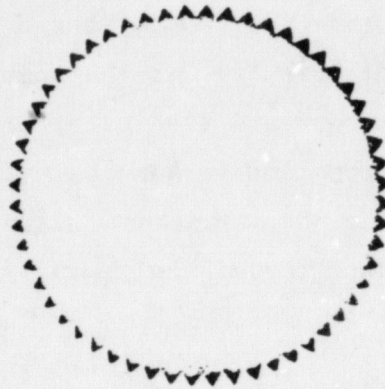


EXHIBIT A--AGREEMENT DATED NOVEMBER 28, 1967 BETWEEN  
RIDGWAY AND EXCLUSIVE CHINA ANNEXED TO  
AFFIDAVIT OF BERNARD CORDON

AGREEMENT made the twenty-eighth day of November 1967 BETWEEN Ridgway  
Stores Limited whose registered office is at Ash Hall Stoke-on-Trent  
(hereinafter called the Company) of the one part and Exclusive China Company  
Inc., of 1107 Broadway New York N.Y. 10010 U.S.A. (hereinafter called the  
Agent) of the other part

---

WHEREBY IT IS AGREED as follows:-

- (1) The Company hereby appoints the Agent to be its sole agent and distributor for the sale of its products as set out in the Schedule herEOF and such other commodities manufactured by the Company as may from time to time be mutually agreed between the parties within and for the territory following (which is hereinafter called the said territory) namely:-

The United States of America,
- (2) The appointment shall take effect from the 20th November 1967 and shall continue in force for a term of one year. The appointment shall be subject to termination upon the 27th November 1968 by either party giving not less than six months previous notice in writing to the other party, and shall continue after the said term until it shall be determined at any time by either party giving to the other party not less than three months notice in writing for that purpose.
- (3) The Agent shall, during the subsistence of this Agreement, faithfully and diligently serve the Company as its selling Agent and use his best endeavours to extend the sale of the Company's said products within the said territory and will do nothing that might prevent such sale or interfere with or prejudice the Company's trade in the said territory.
- (4) The Company will supply the Agent with particulars (including copies of any published illustrations and catalogues) of current types of the said products available for sale in the said territory with statements of the ex factory prices to be charged and of any other conditions applicable to ex factory sales, and details of approximate supplies available and estimated delivery dates. All



*Exhibit A Annexed to Affidavit of Bernard Cordon*

sales made by the Company to the Agent for his own account shall be at the best net prices available.

- (5) The Company will, from time to time, supply the Agent with reasonable quantities of samples of the Company's products available for sale within the said territory. Such samples shall be supplied by the Company at a discount of 25% off invoice price. The aforesaid samples shall remain the property of the Company until they shall have been paid for by the Agent. The Agent hereby agrees that the amount due to the Company in respect of the aforesaid samples shall be debited against any commission due to the Agent by the Company. No commission shall be payable to the Agent on goods supplied as samples. All freight carriage and landing costs in respect of samples shall be payable by the Agent.

) The Agent shall not sell any of the Company's products for delivery to any person or Company resident outside the said territory or to any person or Company resident within the said territory for the purpose of export to any other country.

- (7) The Agent shall not, during the continuance of the agency, sell or offer for sale in the said territory any goods of a similar class to the Company's products as set out in the Schedule hereof, or which might compete or interfere with the Company's trade, either on his own account or on behalf of any person or company whatsoever without prior written agreement of the Company.

- (8) The Agent will, in all his dealings on behalf of the Company, clearly represent that he acts as the Company's Agent. The acceptance by the Company of all orders from the territory for the products as set out in the Schedule hereof shall be subject to the prior agreement of the Agent.

- (9) The Company will use its best endeavours to fulfil orders procured by the Agent and accepted by the Company in accordance with its terms

but reserves the right to cancel or make variations in prices and delivery dates in accordance with its conditions of sale.

(10) All orders shall be accepted on the basis of payment in cash in sterling in the United Kingdom, or otherwise, in individual cases as the Company may from time to time specify. The Company shall invoice all products supplied direct to the customers and provide the Agent with a duplicate of every such invoice including invoices in respect of orders received by the Company direct from customers in the said territory. Payment for all products invoiced shall be made direct to the Company and any monies received by the Agent for the Company shall forthwith be transmitted to the Company.

(11) The Company shall allow to the Agent commission at the rate of ten per centum (10%) upon the cash received from the invoiced price of all relevant products supplied to customers resident within the said territory during the term of this Agreement. Such invoiced price shall be deemed to be the net cost of the products exclusive of all packing and delivery charges, duties, insurance or other incidental costs and expenses. Commission shall only be payable in respect of cash received for products supplied against relevant orders accepted during the subsistence of this Agreement. An acknowledgment of all relevant orders from the said territory accepted by the Company shall be forwarded to the Agent.

(12) The Company will submit to the Agent at the end of every month an account of goods paid for by customers covered by the agency hereby constituted, during the previous month, and will pay to the Agent commission at the rate aforesaid in accordance with such account.

(13) All expenses incurred by the Agent in connection with the agency shall be borne by the Agent unless otherwise specifically agreed by the Company. The Agent will be paid full commission on the cash received from products supplied under all orders taken at the Company's



showrooms, offices, or works in the United Kingdom, for delivery to the said territory.

(14) During the subsistence of this Agreement, the Company will not, in respect of any of the products covered by the agency hereby constituted, appoint any other agent or representative for sales in the said territory.

(15) This Agreement shall not be assignable by the Agent without the prior written agreement of the Company.

(16) Nothing herein contained shall be deemed to constitute the Agent as Agent of the Company for any other purpose than the selling agency hereby constituted and the Agent agrees not to commit or purport to commit the Company to any obligation except as hereby specifically provided, or to pledge the credit of the Company.

(17) Any notice required to be given hereunder shall be given in writing and may be served either personally or by post, addressed in the case of the Company to its registered office for the time being and, in the case of the Agent, to his last known place of business and a notice served by post shall be deemed to be served at the time when in the ordinary course it would be delivered to the addressee according to the date and time of posting.

(18) This Agreement and the agency hereby constituted shall be construed and have effect according to the Laws of England and any dispute or difference arising between the parties hereunder or regarding anything done or omitted by either party in relation to this Agreement shall be determined in accordance with those laws and in any such dispute the Agent will submit to the Supreme Court of Judicature in England as the sole competent Tribunal for determining the same.

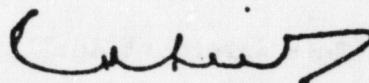
(19) Any variation of this Agreement shall be considered valid and

Exhibit A Annexed to Affidavit of Bernard Cordon

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as constituting part of the Agreement, provided such variation shall have been made in writing, and duly signed, both by the Company and the Agent.

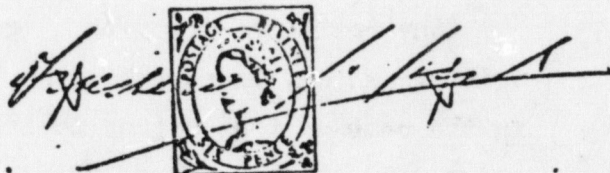
FOR AND ON BEHALF OF : Ridgway Potteries Limited.



Secretary.

Duly authorized in that behalf.

FOR AND ON BEHALF OF : Exclusive China Company Inc.



Duly authorized in that behalf.

SCHEDULE.

All the ornamental bone china products of the Company's Adderley Floral China Factory, Sutherland Road, Longton, Stoke-on-Trent, with the exception of:-

- (a) Bird studies backstamped "Royal Adderley Floral bone china", and
- (b) Bone china floral clusters backstamped "Golden Crown".



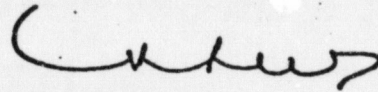
EXHIBIT B--AGREEMENT DATED NOVEMBER 14, 1969 AMENDING  
AGREEMENT OF NOVEMBER 28, 1967 ANNEXED TO  
AFFIDAVIT OF BERNARD CORDON

AGREEMENT made the fourteenth day of November, 1969, BETWEEN Ridgway Potteries Limited whose Registered Office is at Ash Hall, Stoke-on-Trent, England, (hereinafter called "the Company") of the one part and Exclusive China Company Inc., formerly of 1107, Broadway, New York, U.S.A., but now of 11, East 26th Street, New York, U.S.A., (hereinafter called "the Agent") of the other part is supplemental to an agreement dated the twenty-eighth day of November, 1967, made between the Company and the Agent (hereinafter called "the Principal Agreement") \_\_\_\_\_

WHEREBY IT IS AGREED as follows:-

Clause 2 of the Principal Agreement is hereby varied in accordance with Clause 19 thereof to the extent that the Principal Agreement shall be subject to termination by either party giving to the other party twelve months' notice in writing at any time.

FOR AND ON BEHALF OF : RIDGWAY POTTERIES LIMITED.



Secretary.

FOR AND ON BEHALF OF : EXCLUSIVE CHINA COMPANY INC.



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EXHIBIT C--AGREEMENT DATED JULY 30, 1971 FURTHER  
AMENDING AGREEMENT OF NOVEMBER 28, 1967  
ANNEXED TO AFFIDAVIT OF BERNARD CORDON

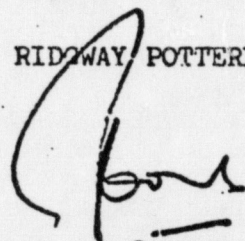
THIS AGREEMENT is made the thirtieth day of July, 1971 BETWEEN Rid-way Potteries Limited whose registered office is at Ash Hall, Stoke-on-Trent, England (hereinafter called "the Company") of the one part, Exclusive China Company Inc. formerly of 1107 Broadway, New York, U.S.A. but now of 11 East 26th Street, New York, U.S.A. (hereinafter called "the Assignor") of the second part and Ellis, Barker, Silver Company Inc. of 11 East 26th Street, New York, U.S.A. (hereinafter called "the Assignee") of the third part is supplemental to an agreement dated the twenty-eighth day of November 1967 (hereinafter called "the Principal Agreement") as amended by an agreement of the fourteenth day of November 1969 both made between the Company and the Assignor

WHEREBY IT IS AGREED as follows:-

It is mutually agreed between the parties hereto that in accordance with Clause 15 of the Principal Agreement the Assignor is hereby released from the Principal Agreement and that the Assignee is appointed agent for the products of the Company referred to in the Schedule to the Principal Agreement subject to all the terms and conditions of the said Agreement.

FOR AND ON BEHALF OF:

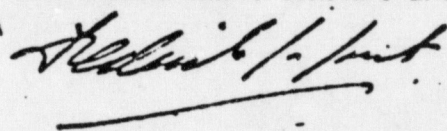
RIDWAY POTTERIES LIMITED



Secretary

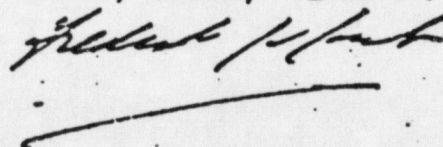
FOR AND ON BEHALF OF:

EXCLUSIVE CHINA COMPANY INC.



FOR AND ON BEHALF OF:

ELLIS, BARKER, SILVER CO. INC.





AFFIDAVIT OF FREDERICK A. HART IN OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
ELLIS-BARKER SILVER CO. INC. :  
Plaintiff, : 74 Civ. 1080 (MP)  
-against- :  
RIDGWAY POTTERIES LIMITED, : AFFIDAVIT IN OPPOSITION TO  
Defendant. : DEFENDANT'S MOTION TO DIS-  
MISS THE COMPLAINT.  
-----x

STATE OF NEW YORK )  
SS.:  
COUNTY OF NEW YORK)

FREDERICK A. HART being duly sworn deposes and says:

1. I was, during the time relevant to the issues in this action and until 1973, shortly after the plaintiff was acquired by the Towle Manufacturing Company, President of the plaintiff corporation and I am fully familiar with the facts and circumstances described herein. I make this affidavit in opposition to the defendant's motion to dismiss the complaint in this action on jurisdictional grounds.

2. I have read the affidavits of Bernard Cordon, Director and Secretary of the defendant Ridgway Potteries Limited, (hereinafter "Ridgway") and the statement of the "factual basis of the motion" set forth in defendant's accompanying memorandum of law.

3. The defendant's contention appears to be that the contract which is the subject of this action was "negotiated in England", that the defendant corporation does not come under the

"doing business" jurisdictional standards of the State of New York and that this Court should decline jurisdiction because of an alleged "stipulation" between the parties.

4. Contrary to the defendant's assertions, the business relationship between the parties arose in New York and the subject agreement was negotiated in both New York and England.

5. Ellis-Barker is, and was at the times mentioned in the complaint, a distributor and sales agent for imported china and silver. In the summer of 1967, when it became clear that the plaintiff, then known as Exclusive China Company, Inc. and now known as Ellis-Barker Silver Co., Inc., (hereinafter "Ellis-Barker") would require an additional source of merchandise, I contacted the British Consulate in New York and requested assistance in locating a chinaware manufacturer who desired a representative in New York. The British Consul advised that the "'Royal Adderley' people" might be interested.

6. Through the British Consul, contact was established with Allied English Potteries Limited, the parent company of Ridgway which manufactured, among other things, ornamental china known for its floral patterns, under the name "Royal Adderley".

7. Soon thereafter, in or about August or September, 1967, Mr. George Cliff of Ridgway came to New York as a result of our inquiries. We had extensive discussions, which took place mainly in our offices, then at 1107 Broadway, New York, New York.

8. Negotiations centered on Royal Adderley Floral



ornamental china and the dinnerware products of Paragon China, Ltd. (hereinafter "Paragon"), an affiliated company.

9. Then, in the fall of 1967, I journeyed to England for further discussions and, upon my return to the United States, entered into distributorship and agency agreements with both Ridgway and Paragon. The agreements were executed in New York on behalf of Ellis-Barker and in England on behalf of Ridgway and Paragon.

10. Mr. Cordon's assertion that the defendant, Ridgway, does not do business in New York is, at first blush, engaging, but, in fact, irrelevant to the questions posed in this action. It is respectfully suggested that whatever arrangements are presently in effect for Ridgway's business in the United States, the defendant begs the question as to its purposeful and systematic activities in New York which give rise to the present dispute.

11. The relevant facts are far indeed from the picture Mr. Cordon attempts, by omission, to draw. Soon after the agreement was executed, a working relationship was established wherein regular and systematic visits were made by representatives of each part to the offices of the other.

12. Mr. George Cliff of Ridgway visited our offices in New York several times a year to review our mutual business, to plan the lines of merchandise and to understand, at first hand, the operations of our distributorship (Samples of the correspondence attesting to such visits are annexed hereto as Exhibits A, B & C.).

13. When Mr. Gordon Lawton, an employee of Ridgway, was appointed as assistant to George Cliff, the management of Ridgway considered it an important part of Mr. Lawton's job to confer with Ellis-Barker in New York. (See the letter from George Cliff dated September 7, 1971, annexed hereto as Exhibit D). Mr. Lawton spent an intensive time becoming familiar with the Ellis-Barker operation and in advising us of developments in England.

14. Ellis-Barker also had regular visits from Mr. Raymond Weightman, a Director of Allied English Potteries Limited (Ridgway's parent) until his resignation in 1972, following the merger of Allied English Potteries Limited into Royal Doulton Tableware Limited. (See, e.g., Mr. Weightman's letter, dated May 20, 1971, annexed hereto as Exhibit E). Upon information and belief, Mr. Weightman was also a Director of Ridgway, though his correspondence with Ellis-Barker on Ridgway matters was written on the letterhead of Allied English Potteries Limited.

15. My conversations with Mr. Weightman, during his New York visits, dealt with all aspects of our Ridgway business, including merchandising, sales, new products, design problems and planning.

16. When, in 1970, Allied English Potteries Limited established a sales office in New York City, it was located at 11 East 26th Street, the very building in which Ellis-Barker did its business. The Allied English Potteries Limited company in New York was known to me as "A.E.P., Inc.". It provided a sales office for Ridgway products, other than "Royal Adderley". Mr. Weightman's letters of March 23, 1970 and February 24, 1971



(annexed hereto as Exhibits F&G), note the felicity of the arrangement and emphasize that the close relationship necessary between manufacturer and distributor will be facilitated "now that we can be in such close touch in New York".

17. From then on, Ellis-Barker had only to travel in the elevator at 11 East 26th Street to be in touch with Ridgway representatives.

18. During one of George Cliff's visits to New York, which to the best of my recollection occurred in late 1969 or early 1970, Mr. Cliff advised me that he was negotiating an important deal to supply china decanters to an American importer of Scotch whiskey. Not long thereafter, in 1970, when advertisements began to appear for "Royal Adderley" china scotties, sold by the Fleischmann Distilling Corporation, Ellis-Barker concluded that such sales were the result of the New York negotiations by Mr. Cliff, although Mr. Cliff had not advised us the scotties were to be sold under the "Royal Adderley" name. (Exhibit H annexed hereto). Upon information and belief, such is the fact.

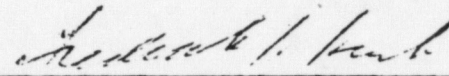
19. With respect to the defendant's assertion that the "Nan Prussack" agreement was negotiated and performed solely outside the United States, the documents and Mr. Cordon's affidavit are, once again, in open conflict. Annexed hereto as Exhibit I, is a letter from George Cliff, dated July 13, 1971, referring specifically to the extent of Mr. Cliff's discussions with me and Nan Prussack in New York.

20. Finally, in January of 1973, the agreement with

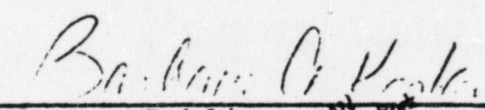
## Affidavit of Frederick A. Hart

respect to Ellis-Barker's distribution of Royal Adderley was terminated by exercise of a 12 months' notice provision. (See Mr. Bernard Cordon's letter, dated January 2, 1973, annexed hereto as Exhibit J). During the final year of the agreement, Ridgway products continued to be sold from the office at 11 East 26th Street.

It is respectfully submitted that despite attempts to suggest otherwise, the defendant corporation, as documented by the exhibits annexed hereto, engaged in systematic, regular visits to New York in connection with sales arising out of the subject agreement and in connection with the balance of defendant's sales made in New York from the A.E.P., Inc. office at 11 East 26th Street.

  
\_\_\_\_\_  
Frederick H. Hart

Sworn to before me this  
14<sup>th</sup> day of August, 1974.

  
\_\_\_\_\_  
Notary Public.

BARBARA G. KAPLAN  
Notary Public, State of New York  
No. 31-7156550  
Qualified in New York County  
Commission Expires March 30, 1976



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A 37

EXHIBIT A--LETTER DATED JULY 28, 1971 ANNEXED  
TO AFFIDAVIT OF FREDERICK A. HART

*Adderley Floral China Works*

## RIDGWAY POTTERIES LIMITED

Manufacturers of "Royal Adderley Floral" Bone China



SUTHERLAND RD.  
LONGTON,  
STOKE-ON-TRENT ST3 1HZ  
ENGLAND.

Tel: 0782 39168-9  
Cables:  
Floral, Stoke-on-Trent

Mr. F. H. Hart.,  
Messrs. Exclusive China Co. Inc.,  
11, East 26th Street,  
New York,  
N.Y. 10010,  
U.S.A.

GWC/BVC.

28th July, 1971.

Dear *Fred,*

Further to our long talk in your Office on the question of the packing of the Classics, I am pleased to advise you with the consignment of goods going forward this week, I have had included three Classic small size and three Classic large size, each of which has been very carefully wrapped and placed in an outer carton which is larger than we would normally use. and I would be extremely glad to have from you Fred, a report of the state of arrival of these six pieces. I believe that packing them in this manner that they will arrive completely intact but obviously I would like to have your assurance ultimately that this was the case, so I will not be taking any further action until I have had word from you.

You will be pleased to know that we are getting along very well with a lot of the new lines that we discussed and I will be sending out to you by air parcel post within the next 2/3 days a cigarette holder with the Poinsettia, the Swan filled with cornflowers, a little basket with the blue ribbon and two small roses and the small container with a single large rose.

I have also given a lot of thought to the use of wood with our china products and I am developing this thoroughly and as soon as I have got something to show to you I will write and let you know just what it is.

I do hope to hear from you within the next day or so that Nan Prusseck is able to come over.

*Kindest Regards,*  
Yours sincerely.,,

*George*  
G. W. Duff.

A 38

EXHIBIT B--LETTER DATED DECEMBER 7, 1971 ANNEXED TO  
AFFIDAVIT OF FREDERICK A. HART

*Adderley Floral China Works*  
**RIDGWAY POTTERIES LIMITED**

Manufacturers of "Royal Adderley Floral" Bone China



SUTHERLAND RD.  
LONGTON,  
STOKE-ON-TRENT ST3 1HE  
ENGLAND.

Tel: 0782 39168-9  
Cables:  
Floral, Stoke-on-Trent

Mr. P. R. Hart.,  
Messrs. Ellis Barker Silver Co. Inc.,  
11, East 26th Street,  
New York, N.Y. 10010.  
U.S.A.

GWC/BVC.

7th December, 1971.

Dear *Pat,*

I have to mention to you that against the order which you gave to me during my recent visit to New York, that the Salt and Pepper is now produced whereby the Rose is the Salt and the Carnation is the Pepper and this is the way that we have had to put them into production by virtue of popular demand throughout the world markets, so I have taken the liberty of amending your order so that it reads to conform to the above requirements and I have shown these under your IBM No. 278.

Do please let me know if you have any adverse comments to make about this.

Yours sincerely.,

*G. W. Cliff*  
G. W. Cliff



A 39

EXHIBIT C--LETTER DATED JULY 18, 1972 AND  
LETTER DATED JUNE 28, 1972 ANNEXED  
TO AFFIDAVIT OF FREDERICK A. HART

*Adderley Floral China Works*  
**RIDGWAY POTTERIES LIMITED**

Manufacturers of "Royal Adderley Floral" Bone China



SUTHERLAND RD.  
LONGTON,  
STOKE-ON-TRENT ST3 1HZ  
ENGLAND.

Tel: 0782 39168-9  
Cables:  
Floral, Stoke-on-Trent

Mr. F. H. Hart.,  
Ellis Barker Silver Co. Inc.,  
Exclusive China Division.,  
11, East 26th Street,  
New York, N.Y. 10010.

GWC/BVC.

18th July, 1972.

Dear

*Fred.*

As you know I had hoped and planned to see you at the end of this month or certainly by the first week of August at the latest but unfortunately due to the tremendous amount of work involved in the merging of A.E.P. and Royal Doulton, all chief executives have now been asked not to be overseas during the next month or two and this, therefore, means that I have got to suspend my plans to see you and I would wish you to know that as soon as I can be free to travel I will make it my business to arrange a visit and hope that it will not be too late to discuss new things for 1973.

I am sure that you perfectly understand the situation and there is no need for me to go into any greater explanation and I only sincerely regret not being able to be with you as planned.

*Kind Regards,*

Yours sincerely.,

*George*  
G. W. Cliffe.

Exhibit C Annexed to Affidavit of Frederick A. Hart

Adderley Floral China Works

## RILGWAY POTTERIES LIMITED

Manufacturers of "Royal Adderley Floral" Bone China

Messrs. F. H. Hart.,  
 Messrs. Ellis Barker Silver Co. Inc.,  
 11, East 26th Street,  
 New York,  
 N.Y. 10010.



SUTHERLAND RD.  
 LONGTON,  
 STOKE-ON-TRENT ST3 1HZ  
 ENGLAND.

Tel: 0782 39168-0  
 Cables:  
 Floral, Stoke-on-Trent

GWC/BVC.

28th June, 1972.

Dear *Fred,*

Further to your letter concerning the possibility of introducing a range of floral items which could be launched under the Royal Malvern backstamp and which could be named "Flower Talk" series, I have given this considerable thought and am pleased to tell you that I have given instructions for the following six items to be assembled and decorated:

"Forgive and Forget"	3 Pansies.
"Thanks for the Memory"	3 Anemones.
"Au revoir but not good-bye"	1 Rose 1 Anemone 1 Carnation.
"I'll be seeing you"	3 Carnations
"You are my heart's delight"	3 Yellow Roses
"Do you love me as I love you"	3 Red Roses.

I think that we would be unwise in trying to go for a series of 12 under the Royal Malvern backstamp and feel confident that if we stick to six, this is going to be a much more acceptable line and obviously when the samples are prepared I will have these cost and let you know the outcome.

There is also another aspect and it is to consider the unit display which could perhaps hold the six items and this is something that we can talk about as well as other items when I can see you which I hope will be before the end of July.

In the meantime Fred you have not given me any indication as to your own vacation plans and this would be helpful if you are hoping to be away during July or early August.

With kindest regards.,

Yours sincerely.,

*George*  
 G. W. Cliff.



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EXHIBIT D--LETTER DATED SEPTEMBER 7, 1971 AND CABLEGRAM  
ANNEXED TO AFFIDAVIT OF FREDERICK A. HART

*Adderley Floral China Works*

**RIDGWAY POTTERIES LIMITED**

Manufacturers of "Royal Adderley Floral" Bone China



SUTHERLAND RD.  
LINGTON.  
STOKE-ON-TRENT ST1 1HZ  
ENGLAND.

Tel: 0782 39168-9  
Cables:  
Floral, Stoke-on-Trent

Mr. F. H. Hart.,  
Messrs. Exclusive China Co. Inc.,  
11, East 26th Street,  
New York, N.Y. 10010.

GWC/BVC.

7th September, 1971.

Dear

*Fred,*

I am sure you will remember meeting Mr. Gordon Lawton, my Works Manager, at the factory during your visits here and it is now with the greatest of pleasure that I advise you that very recently he was appointed Deputy Chief Executive of this factory. It is necessary for Gordon to have an insight of how distributors work overseas and I have therefore planned for him to make a trip to the U.S.A. and Canada.

The arrangements that I have made is for him to leave here on Wednesday October 13th for New York and I hope that you will be able to accommodate him and he will be leaving New York for Toronto on October 19th. I am sure he will find it extremely interesting and you will be able to discuss matters with him on all levels.

With kindest regards.,

Yours sincerely.,

*George*

G. W. Cliff.

*Reservations of Prince George Oct 13-1872*

*with 1/2/71*

*532-7700*

*Prince George Hotel*

A 42

Exhibit D Annexed to Affidavit of Frederick A. Hart

NY Phone Serv: Telegr. 797-3211 / Mesgr. 7522 / Inter.

INDICATIONS INC.

ZCZC FB4516 VIA IIT AIA681 MN10

UINY CO GCMR 013

LONGTONSTAFFS 13 12 1205

ELLIS BARKER SILVER COMPANY

11 EAST26THSTREET

NEWYORK

LAWTON ARRIVING WEDNESDAY FLIGHT BA537 *Arrives 3:20 PM*

CLIFF

COL 11 26TH BA537

NNNN



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EXHIBIT E--LETTER DATED MAY 20, 1971 ANNEXED  
TO AFFIDAVIT OF FREDERICK A. HART

ONLY COPY AVAILABLE



ALLIED ENGLISH POTTERIES LIMITED

ASH HALL, STOKE-ON-TRENT, STAFFORDSHIRE, ST2 9EJ TELEPHONE ASH BANK 2121-7

ASJ/SAC

20th May 1971

Mr. F. H. Hart,  
Exclusive China Company Inc.,  
11 East 26th Street,  
New York 10010.

Dear Mr. Hart,

Thank you for your letter of the 17th May. I see no reason whatsoever to alter the decision conveyed to you in Mr. Cliff's letter of the 4th June 1971.

En passant I should mention that I shall be spending the day of the 16th June at 11 East 26th Street and I hope I shall see you then.

With kindest regards,

Yours sincerely,

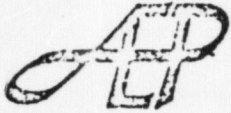
R. S. Weightman

DIRECTORS K. M. D. MILLS (CHAIRMAN), G. E. WOTHERSPOON, C.A. (DEPUTY CHAIRMAN), R. S. DEACON  
A. G. ELLIS, G. MURRAY, R. S. WEIGHTMAN, O.B.E., T.D., J.P.

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A 44

EXHIBIT F--LETTER DATED MARCH 23, 1970 ANNEXED  
TO AFFIDAVIT OF FREDERICK A. HART



ALLIED ENGLISH POTTERIES LTD

ASH HALL . STOKES-ON-TRENT . ST2 9EJ . TELEPHONE: ASH BANK 2121

RSW/SAC

23rd March 1970

Mr. Frederick H. Hart,  
President,  
Exclusive China Company Inc.,  
11 East 26th Street,  
New York 10010,  
U.S.A.

Dear Mr. Hart,

During Pat's visit I was able to discuss with him our intentions as far as the Paragon line was concerned, by now of course you will have received our notice of termination and I explained to Pat that this had been delayed until we had been able to see Paul Schmid in London some few days ago.

I was glad to learn from Pat first hand, of the amicable discussions which you had had with Mr. Schmid and I am sure that in the future there may be something which can be worked out between the organisations.

I was able also to take the opportunity of enlarging to Pat our aims and intentions as far as the new A.E.P. company in the United States was concerned and it is particularly felicitous that we shall both be living in the same office building.

I was also able to confirm to Pat

a) We will take over at your landed cost any inventory which you may have on hand at the date of termination.

b) There will be no objection to your continuing to sell from stock through to 31st December 1970 although termination of the agency arrangement is at an earlier date.

I hope that you will feel that this arrangement which Pat and myself have reached is fair and equitable.

Pat tells me that you are due to be over here at the beginning of May and I very much look forward to seeing you. At the same time I expect to be in New York myself during the last fortnight in May and this will enable us to clear any outstanding points.

Yours sincerely,

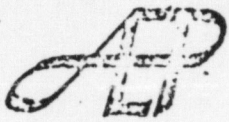
R. S. Weightman



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A 45

EXHIBIT G--LETTER DATED FEBRUARY 24, 1971 ANNEXED  
TO AFFIDAVIT OF FREDERICK A. HART



## ALLIED ENGLISH POTTERIES LTD

ASH HALL . STOKE-ON-TRENT . ST2 9EJ . TELEPHONE: ASH BANK 2121

RSW/SAC

24th February 1971

Mr. Frederick H. Hart,  
Exclusive China Company Inc.,  
11 East 26th Street,  
New York 10010.

Dear Mr. Hart,

As promised in my letter of the 21st January, we have had the opportunity here in Stoke-on-Trent of discussing the proposals outlined in your letter of the 21st December 1970 with particular reference to the extension of your agreement from a 12 month to a three year term.

We have noted your comments regarding the development of new merchandise in particular, working with Miss Barbara Linley-Adams on the animals and birds.

As I think you will readily accept any agreement depends essentially upon mutual goodwill and understanding. It would seem to us that these essential factors have been already clearly established between us and we believe are even to be more the case now that we can be in such close touch in New York.

As I believe I outlined to you, the essential purpose of establishing A.E.P. Inc., with Mr. R. Saving as President was to further our development in the United States particularly through our established distributors. The results of our discussions with him here make us confident that this may well be purposefully achieved.

We are of the considered opinion that the present agreement between us should remain unaltered. As you know it is already non-standard in so far that our other world agreements are based upon a three month or six month term and we amended our agreement with you specifically to establish the confidence in which we hold your company.

With every good wish,

Yours sincerely,

R. S. Weightman

DIRECTORS E. M. D. MILLS (CHAIRMAN). G. E. WOTHERSPOON. C. A. (DEPUTY CHAIRMAN) R. S. DEACON.  
J. G. FLETCHER. G. MURRAY. R. S. WEIGHTMAN. O.B.E., T.D., J.P.

EXHIBIT H--ADVERTISEMENT ANNEXED TO AFFIDAVIT  
OF FREDERICK A. HART

## Collector's find on Royal Adderley English Bone China

**\$30 each\***

These "Black & White" Scotties of dated and limited-edition English Bone China surpass all previous specialty bottlings.

They are not ordinary earthenware ceramics, but authentic Royal Adderley English Bone China from Britain's legendary craftsmen.

Each ten-inch Scotty holds a full fifth of light, smooth "Black & White" Scotch, easily dispensed and happily included in the price.

A true collector's find. A superlative gift. Every Bone China Scotty is hand-decorated and comes handsomely and individually packaged.

Buy the pair for \$60.

Available at better liquor stores, or write for information to: The Fleischmann Distilling Corporation, 625 Madison Avenue, New York, N. Y. 10022.

\*Variances will occur depending on state and local taxes.



**"Black & White." Scotch for people who know the difference.**

BLENDING SCOTCH WHISKY • 86 & 8 PROOF • THE FLEISCHMANN DISTILLING CORPORATION N.Y.C. SOLE DISTRIBUTOR

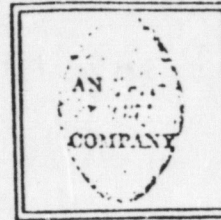


EXHIBIT I--LETTER DATED JULY 13, 1971 ANNEXED  
TO AFFIDAVIT OF FREDERICK A. HART

*Adderley Floral China Works*

## RIDGWAY POTTERIES LIMITED

Manufacturers of "Royal Adderley Floral" Bone China



SUTHERLAND RD.  
LONGTON,  
STOKE-ON-TRENT ST3 1HZ  
ENGLAND.

Tel: 0782 39168-9  
Cables:  
Floral, Stoke-on-Trent

Mr. F. R. Hart.,  
Messrs. Exclusive China Co. Inc.,  
11, East 26th Street,  
New York,  
N.Y. 10010.

GWC/BVC.

13th July, 1971.

Dear *Fred*,

I would like to say how much pleasure I derived from working with you and Pat last week and that within a day or two I will have set down all the various things that we discussed and to let you have all this in the nature of a report for your file, but I am sure you will agree that it is going to take some effort to get down on paper all the many things we discussed with Nan Prussack. I have never worked with anyone in the floral field for so long with what was virtually a stream of non-stop ideas and now after having arrived back I have given a lot of thought to getting her over here and to work alongside us at the factory for two weeks so that she will know exactly what limitations she has to work to when creating new ideas in bone china.

I am pretty sure it would be possible for her to come over on one of these special return flights which I think have a cost of something around £95 and I would be prepared to meet this cost and to meet her hotel expenses during the fortnight that she will be here. and I think Fred it might be better for you to discuss this with her and then to let me know what she feels about it. My idea of the time for her to be here would be obviously after she has had her own vacation and therefore I think we should plan that she be here the last two weeks in September i.e. the 14th to the 25th.

I look forward to hearing from you on this particular point.

With kindest regards.,

Yours sincerely.,

*Georg*  
G. Cliff.

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EXHIBIT J--LETTER DATED JANUARY 2, 1973 ANNEXED  
TO AFFIDAVIT OF FREDERICK A. HART

## ROYAL DOULTON TABLEWARE LIMITED

ASH HALL, STOKE ON-TRENT, STAFFORDSHIRE, ST2 9EJ TELEPHONE ASH BANK 7121-7

BC/MY

2nd January, 1973.

The Ellis Barker Silver Co. Inc.,  
11 East 26th Street,  
New York,  
N.Y. 10010,  
U.S.A.

Dear Sirs,

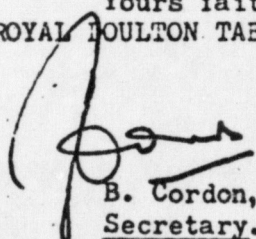
Following the merger of Allied English Potteries Limited with the tableware interests of Doulton & Company Limited into Royal Doulton Tableware Limited, of which the Royal Adderley Floral Factory is now a part, considerable thought has been given to the marketing of the factory's products in overseas territories.

After lengthy deliberation it has been decided to make the fullest use of the existing Royal Doulton overseas companies and their facilities which we are sure you will appreciate makes sound commercial sense in present business trends. I am, therefore, writing to give you twelve months formal notice to terminate the agency and distributorship agreement between our Organisations dated 28th November, 1967 to expire on the 11th January, 1974.

This decision is not intended to reflect in any way upon your conduct of our business and indeed we should like to say that our business relationship over the years has been immensely valued. We sincerely hope that within the period of notice you will be able to consider the requirements of any of your special clients such as catalogue firms as we would wish to assist you to honour any such commitments you may have.

I shall be grateful if you will formally acknowledge receipt of this letter.

Yours faithfully,  
ROYAL DOULTON TABLEWARE LIMITED



B. Cordon,  
Secretary.

Directors: J. P. Medd (Chairman) R. J. Bailey (Managing) J. G. Bellak T. G. A. Birks G. C. Cooper A. G. Ellis  
The Hon. M. J. Hare J. W. Ledger K. M. D. Mills A. W. Norris R. Tyrer G. E. Wotherspoon



REPLY AFFIDAVIT OF BERNARD CORDON IN SUPPORT  
OF MOTION TO DISMISS

ELLIS-BANKER SILVER CO., INC.,

Plaintiff

against

RIDGWAY POTTERIES LIMITED

Defendant

ONLY COPY AVAILABLE

74 Civ. 1080 (MP)

REPLY AFFIDAVIT

Stoke-on-Trent in the County of Stafford

BERNARD CORDON of 29 Southlow Road, Werrington,  
Stoke-on-Trent being duly sworn, deposes and says:-

(1) I am a Director and the Company Secretary of the defendant Ridgway Potteries Limited. I have read Plaintiff's complaint and the Affidavit in opposition to Defendant's motion to dismiss the complaint of Frederick A. Hart, sworn to on August 14, 1974 ("Hart Affidavit"), and am familiar with the matters discussed therein. I make this Affidavit in reply to the papers submitted by Plaintiff in opposition to Defendant's motion to dismiss this action.

(2) Raymond Weightman is no longer associated in any capacity with Ridgway, or any related corporation; however, in my capacity as a Director and the Company Secretary of Ridgway, I am sufficiently familiar with the matters concerning him in the Hart Affidavit to comment thereupon, to the best of my information and belief.

The discussions in 1967 between George Cliff of Ridgway and Plaintiff's assignor in New York, referred to in paragraphs 7 and 8 of the Hart Affidavit were very preliminary in nature. No contracts were concluded or signed, no orders were accepted, and indeed no significant business of any sort was transacted. Furthermore, these discussions did not pertain to the Black and White Scotties ("Scotties"), or to the products of Ridgway's Palatin Works Fenton factory at which the Scotties were manufactured. Nor did the discussions concern products designed by Nan Prussack.

(4) Ridgway's representatives were in New York on only an occasional, sporadic basis, rather than on a regular and systematic basis, as alleged in paragraphs 11 and 12 of the Hart Affidavit. During these occasional, sporadic visits, no contracts were concluded or signed, no orders were accepted, and indeed no business was transacted relating to the Scotties or Nan Prussack products with which this action is concerned.

(5) The visit of Gordon Lawton to New York, referred to in paragraph 13 of the Hart Affidavit, was solely to gain a general familiarity with the distribution efforts of Defendant's distributors. The occasional visits of Raymond Weightman to New York, referred to in paragraphs 14 and 15 of the Hart Affidavit were merely courtesy visits in the course of customer relations visits on behalf of Allied English Pottery Ltd., which visits





## Reply Affidavit of Bernard Cordon

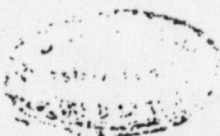
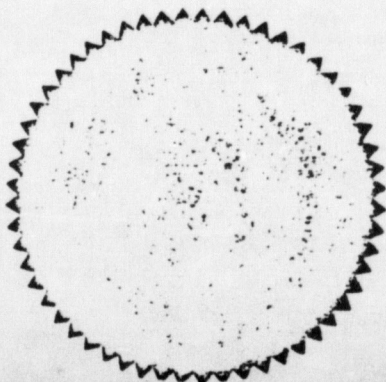
covered the whole of the United States. During the above visits, no contracts were negotiated, concluded or executed, no orders were accepted.

- (6) Allied English Potteries, Inc., was an American corporation, a subsidiary of Allied English Potteries Ltd., a United Kingdom corporation, whose New York office acted as a distributor for certain Ridgway products. As contained in paragraph 16 of the Hart Affidavit, that office did not handle Ridgway's Royal Adderley products. The agreements on which Plaintiff sues relate solely to certain Royal Adderley products. However, Allied English Potteries Inc. is no longer in existence.
- (7) Paragraph 16 of the Hart Affidavit states that Mr. Cliff, while in New York, told Mr. Hart that negotiations were in progress regarding the china scotch decanters. However, a careful reading indicates the Affidavit does not state that Mr. Cliff said such negotiations were taking place in New York. In fact, the negotiations, between Ridgway and James Buchanan & Co. Limited, for sale of the Scotties were at all times conducted in the United Kingdom rather than in New York.
- (8) During the discussions in 1971 in New York among Mr. Cliff, Mr. Hart and Nan Prussack, referred to in paragraph 19 of the Hart Affidavit, no contracts were concluded or executed, no orders were placed, and no work of either a design or manufacturing nature was performed. As is manifest in exhibit 8 to the Hart Affidavit, these 1971 New York discussions were entirely preliminary in nature and Nan Prussack was thereafter to come to England for more definitive discussions. Ridgway thereafter manufactured the Prussack arrangements in England and distributed them outside the United States. The acts contemplated in the Prussack agreement were performed solely outside the United States.

Sworn to before me this  
23rd day of October, 1974.

By *Bernard Cordon*  
in and to the effect of State on Hand.  
*Bernard*

*Notary Public*  
*Notary Public*



XXXXX Civ. Action No. 74 Civ. 1080 (MP)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ELLIS-BARKER SILVER CO. INC.  
Plaintiff,  
-against-  
RIDWAY POTTERIES LIMITED,  
Defendant.



NOTICE OF MOTION AND  
AFFIDAVITS

CRAVATH, SWAINE & MOORE  
Attorneys for defendant.

ONE CHASE MANHATTAN PLAZA  
NEW YORK, N. Y. 10005

Tel. No. MA 5-0700

74 Civ 1080 (MP)

Motion granted. Complaint  
Dismissed without prejudice  
on the grounds of the existence  
of an enforceable forum stipulation  
and the dictates of forum non  
convenience. Submits order accordingly.

So Ordered  
11/27/74  
Nelson Pollack  
USDC

Copy filed  
11/27/74 at 5:00 P.M.  
Lance Weiss + Evelyn  
agst P.T.M.

MICROFILM  
NOV 26 1974

MEMO ENDORSEMENT, POLLACK, J. GRANTING MOTION/ADIT

A 51 ONLY COPY



ORDER GRANTING MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. District Court  
Filed  
Dec 11 1974  
S. D. of NY

-----  
ELLIS-BARKER SILVER CO. INC.,  
Plaintiff,  
-against-  
RIDGWAY POTTERIES LIMITED,  
Defendant.  
-----

ORDER  
74 Civ. 1080 (MP)

Defendant having moved to dismiss this action and the complaint therein, after hearing counsel and after due deliberation and upon filing the decision of this Court, it is hereby

ORDERED that the motion is granted and the action and complaint and each cause of action therein are dismissed, without prejudice to plaintiff's right to reinstate the action in the appropriate court of the United Kingdom, upon the ground of the existence of an enforceable forum stipulation and the further ground of forum non conveniens, and the Clerk is directed to enter judgment accordingly.

Dated: New York, New York  
December 10<sup>th</sup>, 1974

3/ Milton Poilack  
U.S.D.J.

JUDGMENT ENTERED this  
12<sup>th</sup> day of December 1974

3/ Raymond F. Buehner  
Clerk

MA

and timely service of Two copies  
of the within APPENDIX is hereby  
admitted this 31st day of MARCH 1975

.....J.H.R. Amos.....  
Attorney for APPELLANT

Ernest L. Amos

1975 MAR 31 AM 11:26

Re: 10